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Utah Court of Appeals

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Mckette H. Allred; Attorney for Appellee

Don M. Torgerson; Samuel P. Chiara; Chiara and Torgerson, PLLC; Attorneys for Appellant

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IN THE UTAH COURT OF APPEALS

PAIGE CHRISTINE FARNSWORTH, Petitioner and Appellee, vs. LOREN KELLY FARNSWORTH, Respondent and Appellant.	Appellate No: 20110317-CA
--	----------------------------------

BRIEF OF APPELLANT

APPEAL FROM A FINAL JUDGMENT OF THE
SEVENTH DISTRICT COURT OF EMERY COUNTY,
JUDGE DOUGLAS B. THOMAS.

McKette H. Allred
PO Box 575
Castle Dale, UT 84513

Attorney for Petitioner/Appellee

Don M. Torgerson #10318
Samuel P. Chiara #7829
CHIARA & TORGERSON, PLLC
453 East Main, Suite 100
P.O. Box 955
Price, Utah 84501
Telephone: (435) 637-7011
Facsimile: (435) 636-0138

Attorneys for Respondent/Appellant

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UTAH APPELLATE COURTS

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ORAL ARGUMENT REQUESTED

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PAIGE CHRISTINE FARNSWORTH, Petitioner and Appellee, vs. LOREN KELLY FARNSWORTH, Respondent and Appellant.	Appellate No: 20110317-CA
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PO Box 575
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Attorney for Petitioner/Appellee

Don M. Torgerson #10318
Samuel P. Chiara #7829
CHIARA & TORGERSON, PLLC
453 East Main, Suite 100
P.O. Box 955
Price, Utah 84501
Telephone: (435) 637-7011
Facsimile: (435) 636-0138

Attorneys for Respondent/Appellant

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JURISDICTION AND NATURE OF PROCEEDINGS

Loren Kelly Farnsworth appeals from a final order of the Emery County Seventh District Court entered by the Honorable Douglas B. Thomas on March 15, 2011. This Court has jurisdiction under Utah Code § 78A-4-103(2)(h).

ISSUES ON APPEAL AND STANDARD OF REVIEW

Issue 1: The trial court ignored Petitioner's historical standard of living and awarded sufficient alimony to allow Petitioner to purchase a home worth twice as much as the home she had lived in during the entire marriage. That inflated the Petitioner's monthly mortgage requirement by \$710.00. Did the trial court abuse its discretion by creating a standard of living for Petitioner that never existed during the marriage?

Where Preserved: R.139:83-86.

Standard of Review: Trial court alimony awards are reviewed for abuse of discretion. *Connell v. Connell*, 233 P.3d 836, 839 (Utah Ct.App. 2010).

Issue 2: The parties' minor child will be an adult in less than five years. Despite that, the trial court awarded \$200/month for 22 years as permanent alimony to Petitioner to pay the child's temporary hobby expenses. Did the trial court abuse its discretion by 1) overcalculating the

amount of the hobby expenses; and 2) converting the child's temporary hobby expenses into Petitioner's permanent alimony need?

Where Preserved: R.139:87-88

Standard of Review: Trial court alimony awards are reviewed for abuse of discretion. *Connell v. Connell*, 233 P.3d 836, 839 (Utah Ct.App. 2010).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The following statutes are of central importance to this appeal and are included in the Addendum, due to length:

UTAH CODE §30-3-5 (2011).

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case

Paige Christine Farnsworth ("Wife") filed for divorce against Loren Kelly Farnsworth ("Husband") seeking an award of alimony, custody of the minor child, and appropriate orders concerning child support, property settlement, and parent time.

B. Course of Proceedings

Prior to trial, the parties settled all outstanding issues in the divorce except for alimony and property division. (R.139:3-6).

C. Disposition in the Court Below

A bench trial was conducted on February 4, 2011. (R.082). On March 15, 2011, the trial court entered its *Findings of Fact and Conclusions of Law* and *Decree of Divorce*. (R.091; R.102). Respondent's *Notice of Appeal* was timely filed on April 8, 2011. (R.113).

D. Statement of Relevant Facts

The parties were married August 27, 1998. (R.091:1). During the marriage, the parties acquired a house on 2.83 acres of real property. (R.091:7; R.140: Exhibit 004, Page 10). The house had been built in 1900. (R.140: Exhibit 004, Page 10). The home was the parties' marital residence during virtually the entire marriage. (R.139:81). When the parties separated, Husband moved from the marital residence and Wife remained in the house with the parties' 12-year-old daughter. The house is valued at \$68,000 and is paid for. (R.139:18, R.139:22, R.140: Exhibit 004; R.139:52).

During the marriage, the parties never made any improvements to the property and made only those repairs that were critical. (R.139:19). Early in their marriage, the parties decided not to make repairs to the home in case they should lose the house and the value of the repairs. (R.139:52-54).

After the house was paid for, the parties continued to discuss repairing the

home but never did. Instead, the parties spent virtually all of their discretionary income on hunting. (R.139:19; R.139:52-54).

At trial, Wife requested sufficient alimony to allow her to purchase a home for \$185,000. The home she had chosen was on 3 acres of real property, was several thousand square feet larger than the marital home, was only 12-15 years old, and did not need any repairs. (R.139:25-27).

The trial court determined that \$185,000 was excessive but awarded Wife sufficient alimony to purchase a \$140,000 home, with no money down. (R.091:5). That amount, combined with the equity she received for her share of the marital home (\$34,000.00) approximated Wife's original demand. The trial court awarded the marital home to Husband and ordered him to pay to Wife her share of equity in the marital home. Husband would then be required to invest \$70,000 to repair the marital home, after which he would also have a home worth \$140,000. (R.091:6-7).

The trial court also awarded Wife an additional \$200/month for a full 22 years, to reimburse her for the hay and feed that the minor child used to raise pigs and feed her two horses. (R.091:6). The Court determined the feed amount to be \$200 per month although the values presented at trial resulted in an amount between \$57.50 and \$133.33 per month. (R.139:44-48).

SUMMARY OF ARGUMENT

The trial court established Wife's alimony by splitting incomes, rather awarding alimony based on Wife's historical standard of living. To do so, the Court awarded enough alimony for Wife to purchase, without any down payment, a home worth \$140,000. The trial court also awarded Wife \$34,000 as her share of equity in the marital home. Wife had asked for a \$185,000 home and the Court ultimately awarded her enough cash to buy a \$174,000 home. To support its determination, the trial court also entered findings of fact that were unsupported by any evidence.

Additionally, the trial court impermissibly included the minor child's temporary hobby expenses in Wife's permanent monthly alimony. The trial court's ruling in this regard converted the child's temporary hobby expense of about \$7,000.00 (amortized over a 5-year period) to a permanent alimony amount for Wife of \$52,800.00.

ARGUMENT

A. The trial court refused to base its alimony order on Wife's historical standard living, in violation of established precedent.

The first factor that a court must consider when determining alimony is the financial condition and need of the recipient spouse.¹ A trial court cannot award a recipient spouse more alimony than her established needs

¹ UTAH CODE §30-3-5(8)(a)(i) (2011). Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU. Machine-generated OCR, may contain errors.

require, regardless of the ability of the payor spouse to pay.² To assess the recipient spouse's alimony need, the trial court must determine the standard of living that the parties established during the marriage.³ The purpose of alimony is to enable the recipient spouse to maintain as nearly as possible that same standard of living that was enjoyed during the marriage.⁴

1. The trial court inaccurately determined Wife's alimony need.

At trial, it was undisputed that the marital home was over 100-years-old and the parties had lived there for over 20 years—virtually the entire marriage. The parties also agreed that they had never voluntarily made any improvements to the home, instead choosing to repair only critical items. During their entire marriage, the parties consciously chose to neglect the home and spend their discretionary income on hunting expenses.

And so, the standard of living for both parties and their children was established—they had all lived in a 100-year-old/\$68,000 house for at least twenty years, making few repairs.

Husband agreed to give Wife the exact house she had always lived in, allowing her the same standard of living she had always enjoyed. Instead, Wife demanded a standard of living much better than she had ever enjoyed

² *Sellers v. Sellers*, 246 P.3d 173, 75 (Utah Ct.App. 2010); *See Olson v. Olson*, 226 P.3d 751, 756 (Utah Ct.App. 2010); *See also Bingham v. Bingham*, 872 P.2d 1065, 1068 (Utah Ct.App. 1994).

³ *Crompton v. Crompton*, 888 P.2d 686, 689 (Utah Ct.App. 1994).

⁴ *Connell v. Connell*, 233 P.3d 836, 840 (Utah Ct.App. 2010.)

during the marriage. Wife claimed her “need” was based on a \$185,000 house that she had located in the area. She wanted a home that was a “couple thousand” square feet larger, almost 100 years newer, on more acreage, and valued at almost three times that of the marital home.

Apparently, the trial court largely agreed with Wife’s demand. The trial court blamed the marital home’s disrepair on Husband, awarded alimony based on the estimated monthly payment for a \$140,000 home (without any deposit), and also gave Wife \$34,000 in equity from the marital home. The trial court tried to equalize the parties’ post-divorce money by awarding Husband the marital home, randomly assigning a \$70,000 cost to repair the marital home, and then declaring that the marital home would also be worth \$140,000.

It is entirely unclear why the trial court thought Husband’s or Wife’s housing need should be established at \$140,000—instead of \$120,000 or \$158,000 or \$185,000 or the \$68,000 enjoyed during the marriage. It is also unclear why the trial court did not reduce Wife’s estimated mortgage payment by the \$34,000 that she received for her equity in the marital home.

2. The marshaled evidence does not support the trial court’s findings of fact.

A trial court’s factual findings must show that the judgment follows logically from, and is supported by, the evidence. The findings must also be

sufficiently detailed so as to disclose the steps by which the ultimate conclusion on each factual issue was reached.⁵

The trial court in this case entered unsupported findings of fact to bolster its assessment of Wife's monthly need. The marshaled evidence in support of that determination is set forth below.⁶

a. Findings of Fact found in Paragraph 12

"The appraisal includes three acres of land and the Court believes that the land attributes to the amount of the appraisal, leaving little value in the home."

- The Emery County tax assessor values the buildings on the land at \$32,676.00 and the land at \$33,648.00. (R.140: Exhibit 004, Page 10).
- The house and land together appraised for \$68,000.00. (R.139:18, R.139:22, R.140: Exhibit 004).

"...Respondent has failed to make repairs to the home....The Court finds that Respondent allowed the home to fall in disrepair... Respondent bears the responsibility for the home's decline in value."

- Wife testified that during the marriage, they did nothing to repair the home and only fixed what had to be fixed. (R.139:19).
- During the marriage, they talked about repairs all the time. Initially, they decided not to put improvements into the home in case they lost the house and lost the money they put into it. And even after the house was paid for, they never did any repairs or set money aside for repairs. Instead, they always used the money for hunting.(R.139:52-54).
- All of their excess money during the marriage went to hunting. (R.139:19).
- The home was built in 1900. (R.140: Exhibit 004, Page 10).

⁵ *Fish v. Fish*, 242 P.3d 787,793 (Utah Ct.App. 2010).

⁶ Because the original Findings of Fact were not all separately stated, the disputed portion of the findings of fact is restated and the marshaled evidence is set forth below the disputed finding of fact, and is separately stated.

- The current appraised condition of the home was “fair” (R.140: Exhibit 004, Page 2).
- The home is at least 100 years old. (R.139:55).
- The parties lived in the home for at least 20 years (R.139:81).
- A section of roof leaked in 2009 and a section fell down in 2010. (R.139:52).
- The drywall is still hanging down from the roof leak. The house needs a total bathroom re-do, new doors, new windows, and a roof patched. (R.139:52; R.139:80)

“Respondent has the skills necessary to bring the home into a habitable structure...”

- There were mold issues in a wall and it needed to be repaired because Husband fixed it incorrectly, causing further damage to the bathroom. (R.139:52)
- Husband scraped the snow off the roof and said it didn’t leak anymore (R.139:52).

“In light of this, Petitioner should be able to find living arrangements in the amount of \$140,000.00 which would include the home and horse property to allow Petitioner to maintain the horses.”

- Wife had looked at a home with exactly 3 acres of property that was selling for \$185,000.00 and the mortgage would be \$912.00 per month. (R.139:25, R.139:37). The square footage difference between the marital residence and the new home was a couple thousand square feet. (R.139:25). The new home doesn’t need repairs and is only 12-15 years old. (R.139:26).
- When Wife filed for divorce, she planned to keep the marital home. (R.139:18).
- Husband thinks it is better if Wife keeps the residence (R.139:79).
- Wife does not want the home because it needs repairs. (R.139:19).
- Wife wants a new house because the old house needs a new roof (R.139:51-52) (R.139:80).
- The marital home has approximately 2.9 acres of property. (R.139:25) (Appraisal at page 2---2.83 acres)

“Petitioner testified that she could not rent a home for less than \$600.00 per month and the Court finds the Petitioner would need \$700.00 to \$710.00 per month for a mortgage payment.”

- Rent in Orangeville, Utah was as high as \$600.00 per month. (R.139:26).

b. Findings of Fact found in Paragraph 13

“The court finds that Respondent will need to make repairs to the marital residence that will be awarded to him. The court finds that those repairs will cost about \$70,000.00. Respondent will likely need to borrow money to make the repairs and that his monthly loan payment for those repairs and equity payment will be approximately \$560.00 per month. Once Respondent makes the repairs, his residence will then be valued at approximately \$140,000.00. Respondent and Petitioner will then have equal housing arrangements...The minor child deserves to have an appropriate place to live and stay when she is with each parent.”

- No admissible evidence was presented at trial on any of the items noted in the finding of fact.

3. Explanation.

Based on the evidence at trial, the trial court could have concluded that the house structure comprised approximately 50% of the appraised value of the house and land, but not less. Additionally, there is no evidence in the record that the marital home ever “fell into disrepair” or “declined in value.” Instead, the house was 88 years old when the parties married. They discussed repairs often during the marriage, but deliberately chose to forego those repairs for various reasons. It is as likely that the home was in

“disrepair” from the outset and there was no evidence to suggest that the house ever declined in value.

Importantly, Wife’s testimony at trial was that the parties mutually decided to forego repairs on the home during the entire marriage. They never made any repairs that weren’t absolutely necessary. It wasn’t just Husband’s decision. Accordingly, they are jointly responsible for the current state of the marital home.

As for the ability to make repairs, it is also clear that Husband and Wife are similarly situated. All agreed that Wife did not have the skills. But all apparently agree that Husband did not have the skills. His bathroom repair resulted in additional damage and he “fixed” the leaking roof by simply shoveling snow away from the leak. No evidence was presented to show that Husband has any handyman skills.

There was no evidence presented to the Court that the home was not habitable or that it was an inappropriate place for the minor child to stay with a parent. Instead, the minor child, her older sister, Husband, and Wife all lived in this house for the duration of the marriage and the minor child and Wife were still living in the house at the time of trial. All agreed that the house “needed” some repairs and had a leaking roof but it was otherwise habitable and had apparently been habitable for about 110 years.

There was no evidence at trial supporting the trial court's conclusion that Wife was entitled to a home valued at \$140,000.00. She asked for a \$185,000 house that she had actually located and wanted to purchase. But no fact at trial discussed the availability of a \$140,000 house, whether it would have equivalent acreage or square footage, what the associated mortgage cost would be, or what interest rate would apply. And, as explained above, there was no basis for the Court to determine that \$140,000 is the applicable value for housing where Wife lived in the marital home for the entire marriage and it was available to her.

Importantly, Wife never testified that she could not rent a home for less than \$600 per month. She testified that apartments in Orangeville "are going up to \$600 a month".

Very little evidence was introduced at trial about the repairs that might be required to improve the marital house. No testimony was introduced about which repairs were necessary or if they were simply desired by Wife. No testimony was admitted at trial as to the cost of the repairs or what items would be fixed. There was no evidence to indicate that \$70,000 was a required amount for repairs or that, if those repairs were made, that the \$70,000 investment would directly correlate with a \$70,000 increase in the overall value of the home.

During Husband's closing argument, counsel cited *Sellers v. Sellers* to explain the accurate measure of alimony in the case. But the trial judge had this to say:

'It's unrealistic for [Husband] to presume that [Wife] is going to be able to go out and find a home worth \$66,000 and live in that with a child and be able to do the things that she needs to do. It's unrealistic for [Husband] to presume that [Husband's] going to get away with a \$300 or \$400 alimony a month award on a 22 ½ year marriage.'⁷

It is apparent from the trial court's statement and ultimate ruling that it had no intention of limiting its alimony award to Wife's historical standard of living. Instead, the trial court recognized that Husband had the ability to pay more than Wife needed and the only way to get at the excess money was to income-split in violation of the *Sellers* precedent.

Then, in a transparent effort to justify the inflated housing costs for Wife, the trial court increased the value of the marital home, indicating that Husband would need to put \$70,000 into improvements to increase the marital home value to \$140,000. As noted above, however, no fact supported the trial court's belief that the home required \$70,000 of improvements, that Husband would make the improvements, or that \$70,000 of improvements would result in a \$140,000 home.

⁷ (T. 99—emphasis added)
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Ultimately, the trial court's alimony order can only be construed as an attempt to conceal impermissible income-splitting by making the alimony award appear superficially fair. There was no practical effect of imputing \$70,000 of repairs to the marital home—Husband's financial declaration showed that he had the ability to pay Wife's established need either way.

The trial court was required to base its alimony award on an accurate assessment of Wife's standard of living at the time of separation. Wife (and Husband and their children) was accustomed to living in a home valued at \$68,000, with all of the benefits/problems associated with it. And so, with regard to housing, Wife's alimony award must be based on the monthly cost for a \$68,000 home, less the equity from the marital home (\$34,000). It wasn't. Remand is necessary to correct the trial court's error.

B. The Trial Court improperly included the minor child's hobby expenses when calculating Wife's need for alimony.

A father has a duty to support his children.⁸ A noncustodial father must pay child support in accordance with the guidelines, reasonable and necessary medical expenses for the child, medical insurance expenses for the child, and his share of work-related childcare expenses.⁹ But absent an agreement otherwise, a father is not obligated by statute to pay for extracurricular or hobby expenses for children. Presumably, good fathers

⁸ UTAH CODE § 78B-12-105(1)

⁹ UTAH CODE § 78B-12-111; § 78B-12-212; § 78B-12-214

do, bad fathers don't, and some fathers may legitimately disagree with the extracurricular activities their children participate in.

In this case, the parties' minor child participates in horsemanship events, raises stock animals, and feeds her two horses. The feed cost for the animals fluctuates by season and availability. The hay for 4 horses (including the 2 that belong to an adult daughter) costs between \$65 and \$100 per month, resulting in a monthly cost of \$33-\$50 for the minor child's horses. (T. 29, T.44). The feed for the stock animals costs between \$75 and \$200 per month but is only incurred for 4-5 months. (T.47-48). The minor child retains all of the money earned when the stock animals are sold for her college account. (T. 44-49).¹⁰

On the day of trial, Husband advised the trial court that he was absolutely willing to pay his share of the child's hobby expenses.¹¹ But the trial court disregarded that offer. Instead, the trial court included

¹⁰ Notably, the minor child had raised pigs for only one season by the time of trial. During that year, she raised three pigs. The feed cost (if calculated at \$200.00 per month) was between \$800 and \$1000. The original cost of the pigs is not in evidence. One of the three pigs raised was kept and slaughtered. The other two were sold, for a total return on investment of \$500. (T. 48-49).

¹¹ It is unclear from the trial court's findings of fact how the hobby expenses were calculated. The maximum feed costs would result in an average monthly expense of \$133.33 (Calculated by adding \$50/month for hay for 2 horses each month plus \$200/month for stock feed for a period of 5 months). The total hobby expenses for the child for the entire year were claimed by Respondent to be \$4,296.00 (T.31). That amount averages at \$358.00 per month.

\$200.00/month for the child's hobby expenses when calculating Wife's permanent need for alimony. By doing so, the trial court converted the child's fluctuating temporary expense into the Wife's fixed, long-term need. The trial court could not directly order Husband to pay for the hobby expenses under the child-support statute. But it could have accepted Husband's stipulation. Had the trial court done so, the obligation would have terminated in less than 5 years when the child turns 18, or sooner if the child gave up her hobby. Instead, based on the trial court's ruling, Husband is obligated to pay \$200.00/month for feed expenses for 22 years—long after the child has reached adulthood and stopped participating in 4H.

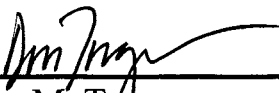
Ultimately, the trial court converted the child's temporary maximum hobby cost of \$7,000.00 (amortized over five years) into a permanent alimony expense of \$52,800.00. The trial court's decision in that regard is improper and must be reversed.

CONCLUSION

Kelly Farnsworth requests that this Court reverse the trial court's alimony order and remand for a reduction of monthly alimony. Kelly Farnsworth also requests his costs on appeal.

SUBMITTED this 2 day of September, 2011.

CHIARA & TORGERSON, PLLC

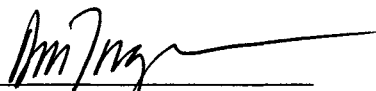
By: 
Don M. Torgerson
Attorney for the Appellant

CERTIFICATE OF SERVICE

On the 2 day of September, 2011, I served two copies of the foregoing *Brief of Appellant* on all interested parties as follows:

McKette H. Allred
PO Box 57
Castle Dale, UT 84513

 By Hand
☒ By First Class Mail
 By Facsimile Transmission

By: 
Don M. Torgerson

ADDENDUM

McKette H. Allred #6698
DAVID M. ALLRED, P.C.
Attorney(s) for Petitioner
P.O. Box 575, 26 East Main
Castle Dale, UT 84513
Phone (435) 381-5326
FAX (435) 381-5691

IN THE SEVENTH DISTRICT COURT OF EMERY COUNTY

STATE OF UTAH

PAIGE CHRISTINE FARNSWORTH,	*	
	*	
Petitioner,	*	DECREE OF DIVORCE
	*	
v.	*	
	*	
LOREN KELLY FARNSWORTH,	*	Case No. 104700061
	*	
Respondent.	*	Judge Douglas B. Thomas

THIS MATTER came before the Honorable Seventh District Court Judge pursuant to
Petitioner=s Verified Petition for Divorce. Both parties were represented by counsel at the
trial which was held on February 4th, 2011 at 9:00 a.m. The Court having heard the testimony of
witnesses, having received exhibits, having heard arguments from the parties= counsel, and
being
fully advised in the premises, having heretofore made and entered its Findings of Fact and
Conclusions of Law, renders the following orders:

IT IS HEREBY DECREED, ADJUDGED AND ORDERED THAT:

GROUND FOR DIVORCE

1. The bonds of matrimony heretofore existing by and between the Petitioner and
Respondent are hereby dissolved, and Petitioner is hereby awarded a Decree of Divorce, to

become absolute and final upon entry by the Court.

CUSTODY

2. The parties have one minor child to wit:

Kacey Ann Farnsworth, age 12, born 3-16-1998.

3. It is in the best interest of the parties' minor child for the parties to be awarded joint legal custody of the minor child. Petitioner shall be designated as the custodial parent. Pursuant to Utah Code Ann. Sec. 30-3-10.1 et seq., the following parenting plan shall be implemented by the parties:

- a. Either parent may make emergency decisions regarding the health or safety of the child. The parents shall discuss with each other and mutually decide the significant decisions regarding the child, including, but not limited to, the child's education, health care, and religious upbringing. The child will be raised and only attend the L.D.S. Church.
- b. If the parties cannot agree to a parenting plan then Respondent may request a review of parent time without making a showing of a change of circumstances.

PARENT TIME

4. Respondent shall be awarded liberal parent time rights with the minor child according to the child's desires and wishes, and upon Petitioner's approval, of the child's extra-curricular activities schedule. Respondent shall be responsible for the pickup and return of the child for his parent time from Petitioner's residence. Neither party shall have the child overnight if he/she is spending the night with an unrelated member of the opposite sex.

CHILD SUPPORT

5. Respondent's child support obligation shall be set pursuant to the "Uniform Civil Liability for Support Act", Utah Code Ann. '78B-12-112 at \$712.00 per month. Respondent shall pay Petitioner directly. One-half of the payment shall be paid by the 5th of the month and the remaining one-half by the 20th of the month. The Court authorizes the use of the Office of Recovery Services. Child support shall continue until the child turns 18 or graduates from high school, whichever is the latter event. The parties stipulated to this amount in mediation using \$1,256.00 for Petitioner's gross monthly income and \$5,802.00 for Respondent's gross monthly income and the child support worksheet reflects \$704.00 as Respondent's obligation but he has chosen to pay \$712.00 and child support is ordered at such amount.

MEDICAL

6. Pursuant to UCA Section 78B-12-212 it is reasonable and proper that:
- a. The parties shall be required to maintain insurance for medical and dental expenses for the benefit of the minor child. The parties shall notify the other party of any change in his/her insurance policy.
 - b. The parties shall equally divide the costs of the premium actually paid by a parent for the child=s portion of the insurance. Respondent currently has the child covered on his insurance.
 - c. The parties shall equally be responsible for all reasonable and necessary uninsured medical, dental, therapy, orthodontic, optical and pharmaceutical expenses, including deductibles and co-payments, incurred for the minor child and actually paid by the parties.
 - d. If the parties incur medical or dental expenses on behalf of the minor child, they shall provide written verification of the cost and payment of the expenses to the other party within 30 days of payment.

e. The party may be denied the right to receive credit for the expenses or to recover from the other party if he/she fails to comply with the Subparagraph "d" above.

f. The party, after being notified of the medical or dental expenses, shall pay it within 30 days of notification.

ALIMONY

7. Petitioner shall be awarded \$1,300.00 a month for alimony for the length of the marriage. Alimony shall be terminated earlier by operation of law.

REAL PROPERTY

8. The parties do own a home and real property, which was acquired during the marriage, located at 385 N. 400 W. Orangeville, Utah, 84537. The home shall be awarded to Respondent. Respondent shall pay Petitioner \$34,000.00 as her equity in the marital home. Petitioner shall vacate the home by April 1, 2011. Respondent shall pay Petitioner her equity in the home within 30 days from the Decree so that she can have the money for a down payment on another home and can be out by April 1, 2011.

LIFE INSURANCE

9. Respondent shall maintain a life insurance policy and name the child as the beneficiary to secure the child support payment for the minor child.

SAVINGS ACCOUNTS

10. The Petitioner testified that the parties had a joint saving's account with a sum of \$13,000.00. Respondent denied having the account. If there is future evidence of Respondent secreting money, it can be brought back before the Court.

DEBTS

11. Each party shall be ordered to pay and assume their own debts incurred after the parties' separation of April 2010, to the present. Each party shall hold the other party harmless

from any liability on these debts. Any unknown debts shall be the responsibility of the party who incurred the debt or benefitted from the debt.

12. The parties have marital debts. Each party shall notify the creditor to whom the parties are responsible to pay of their responsibility to pay the debt. The parties shall mail to their creditor(s), via certified mail, a certified copy of the Decree of Divorce, along with their current mailing address and a letter explaining the Court's division of debt. The parties shall be ordered to keep creditors advised of his/her current mailing address. Each party shall hold the other party harmless from any liability on these debts. Any unknown debts shall be the responsibility of the party who incurred the debt or benefitted from the debt. The parties shall be responsible to pay the following debts:

Petitioner:

A. U.S. Bank Credit Card

PERSONAL PROPERTY

13. The personal property be sold, which includes every gun, fishing pole, mounts, couch, lamp, tools, all of the vehicles, and four wheelers to establish value. The only personal property not to be sold are the horses owned by the parties' children, the furniture used by the child, saddles and tack associated with children's horses. The proceeds from the sale of the personal property shall go to pay off the debt on the horse trailer and then divided equally between the parties.

ATTORNEY'S FEES

14. Both parties shall pay their own attorney fees in this matter.

DOCUMENTS

15. Each party shall be ordered to execute and deliver to the other party any documents necessary to implement the provisions of the Decree of Divorce entered by the court.

Shall a party fail to execute a document within 60 days of the entry of this Divorce Decree, the other party may bring an Order to Show Cause at the expense of the disobedient party, including attorney fees, and seek that the Court appoint some other person to execute the document pursuant to Rule 70 of the Utah Rules of Civil Procedure. Any document executed pursuant to Rule 70 has the same effect as if executed by the disobedient party. If a party fails to comply with any provision of the Decree of Divorce, and the other party is required to file an order to show cause to have the other party comply, the prevailing party shall be awarded his/her court costs and attorney fees.

RESTRAINING ORDERS

16. Both parties shall be restrained and enjoined from making disparaging remarks about the other in front of the child and shall not allow other family members or others to make disparaging remarks about the other in the presence of the minor child. The parties shall further be restrained from intimidating or harassing the other party or the child.

FORMER NAME

17. Respondent shall have her former name of Barnes restored to her if she so chooses.

RETIREMENT

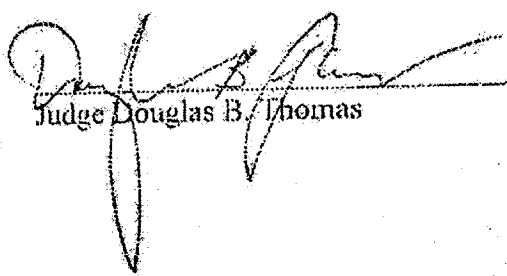
18. Petitioner shall be awarded one-half of Respondent's pension plans through UP&L and IBEW and any other sources using the Woodward formula. The parties shall divide the costs equally for the costs associated with the preparation of the QDRO's.

19. The parties have 401k plans. Petitioner has a 401k of \$565.33 and Respondent has a 401k plan of approximately \$1,700.00. The parties shall offset Petitioner's from Respondent's amount and divide the remaining balance or equalize through the division and sell of the personal property.

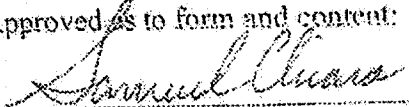
TAX EXEMPTIONS

20. Petitioner is awarded the right to claim the minor child commencing in 2011 and Respondent is awarded the right to claim the child commencing in 2012 and the parties shall alternate claiming the child every other year, thereafter.

DATED this 15th day of March, 2011.


Judge Douglas B. Thomas

Approved as to form and content:


Samuel P. Chiara, Attorney for Respondent
Chiara & Torgerson, PLLC

Farnsworth
Decree

McKette H. Allred #6698
DAVID M. ALLRED, P.C.
Attorney(s) for Petitioner
P.O. Box 575, 26 East Main
Castle Dale, UT 84513
Phone (435) 381-5326
FAX (435) 381-5691

IN THE SEVENTH DISTRICT COURT OF EMERY COUNTY

STATE OF UTAH

PAIGE CHRISTINE FARNSWORTH,	*	
	*	
Petitioner,	*	FINDINGS OF FACT AND
	*	CONCLUSIONS OF LAW
v.	*	
	*	
LOREN KELLY FARNSWORTH,	*	Case No. 104700061
	*	
Respondent.	*	Judge Douglas B. Thomas

THIS MATTER came before the Honorable Seventh District Court Judge pursuant to Petitioner=s Verified Petition for Divorce. Both parties were represented by counsel at the trial which was held on February 4th, 2011 at 9:00 a.m. The Court having heard the testimony of witnesses, having received exhibits, having heard arguments from the parties= counsel, and being fully advised in the premises, now makes its Findings of Fact and Conclusions of Law as follows.

FINDINGS OF FACT

GROUND S FOR JURISDICTION

1. The parties have been actual and bona fide residents of Emery County, State of Utah, for at least three months immediately prior to the filing of this divorce action.
2. The parties are husband and wife having been married on August 27, 1988, in Salt Lake City, Utah.

3. The parties have maintained their marital domicile in the State of Utah.

GROUND FOR DIVORCE

4. Petitioner should be granted a divorce on the grounds of adultery. The Court finds that the Respondent did engage in an extra-marital affair in which he had sexual relations with another woman to whom he was not married. This makes the marriage irretrievably broken.

CUSTODY

5. Utah has jurisdiction of this case as it is the home state of the minor child. The parties are unaware of any pending case in this or any other state concerning the custody of the minor child.

6. The parties have one minor child to wit:

Kacey Ann Farnsworth. age 12, born 3-16-1998.

7. The parties have stipulated to custody, parent time and other provisions regarding the minor child.

8. It is in the best interest of the parties' minor child for the parties to be awarded joint legal custody of the minor child. Petitioner should be designated as the custodial parent. Pursuant to Utah Code Ann. Sec. 30-3-10.1 et seq., the following parenting plan should be implemented by the parties:

- a. Either parent may make emergency decisions regarding the health or safety of the child. The parents shall discuss with each other and mutually decide the significant decisions regarding the child, including, but not limited to, the child's education, health care, and religious upbringing. The child will be raised and only attend the L.D.S. Church.

- b. If the parties cannot agree to a parenting plan then Respondent may request a review of parent time without making a showing of a change of circumstances.

PARENT TIME

8. Respondent should be awarded liberal parent time rights with the minor child according to the child's desires and wishes, and upon Petitioner's approval, of the child's extra-curricular activities schedule. Respondent should be responsible for the pickup and return of the child for his parent time from Petitioner's residence. Neither party should have the child overnight if he/she is spending the night with an unrelated member of the opposite sex.

PUBLIC ASSISTANCE

9. The Petitioner has not received public assistance for the parties' minor child from the State of Utah.

CHILD SUPPORT

10. Respondent's child support obligation should be set pursuant to the "Uniform Civil Liability for Support Act", Utah Code Ann. '78B-12-112 at \$712.00 per month. Respondent should pay Petitioner directly. One-half of the payment should be paid by the 5th of the month and the remaining one-half by the 20th of the month. The Court authorizes the use of the Office of Recovery Services. Child support should continue until the child turns 18 or graduates from high school, whichever is the latter event. The parties stipulated to this amount in mediation using \$1,256.00 for Petitioner's gross monthly income and \$5,802.00 for Respondent's gross monthly income and the child support worksheet reflects \$704.00 as Respondent's obligation but he has chosen to pay \$712.00 and will be ordered at such amount.

MEDICAL

11. Pursuant to UCA Section 78B-12-212 it is reasonable and proper that:

- a. The parties should be required to maintain insurance for medical and dental expenses for the benefit of the minor child. The parties should notify the other party of any change in his/her insurance policy.
- b. The parties should equally divide the costs of the premium actually paid by a parent for the child=s portion of the insurance. Respondent currently has the child covered on his insurance.
- c. The parties should equally be responsible for all reasonable and necessary uninsured medical, dental, therapy, orthodontic, optical and pharmaceutical expenses, including deductibles and co-payments, incurred for the minor child and actually paid by the parties.
- d. If the parties incur medical or dental expenses on behalf of the minor child, they shall provide written verification of the cost and payment of the expenses to the other party within 30 days of payment.
- e. The party may be denied the right to receive credit for the expenses or to recover from the other party if he/she fails to comply with the Subparagraph "d" above.
- f. The party, after being notified of the medical or dental expenses, should pay it within 30 days of notification.

ALIMONY

12. Petitioner should be awarded \$1,300.00 a month for alimony for the length of the marriage. Alimony may be terminated earlier by operation of law. The Court finds that Petitioner has income of \$746.00 per month as a school bus driver and a supplemental income from Rising Sun of \$455.00 per month for a total gross monthly income of \$1,200.00 per month with tax deductions of \$100.00 per month, leaving her with a net income of \$1,100.00 per month.

The parties stipulated to \$712.00 per month as child support which gives Petitioner \$1,812.00 per month as her income. The Court reviews the Petitioner's Financial Declaration and finds that Petitioner testified that she has found a home worth \$185,000 in which to purchase for her and the minor child. The Court believes that a mortgage of \$185,000 is too much to allow Petitioner as a necessary expense. The marital home is valued at \$68,000 as represented by an appraisal. The appraisal includes three acres of land and the Court believes that the land attributes to the amount of the appraisal, leaving little value in the home. The home has fallen into disrepair and Respondent has failed to make repairs to the home. One example was testified to by Petitioner that there was a leak in the roof and so Respondent shoveled the snow off the roof where the leak was occurring and stated that he had stopped the leak. The Court finds that Respondent allowed the home to fall in disrepair. The Court cannot determine why Respondent let the home fall in disrepair but suspects that it may be because of his romantic interests in another woman. Respondent bears the responsibility for the home's decline in value. Respondent has the skills necessary to bring the home into a habitable structure and Petitioner does not have the skills. In light of this, Petitioner should be able to find living arrangements in the amount of \$140,000 which would include the home and horse property to allow Petitioner to maintain the horses. Petitioner testified that she could not rent a home for less than \$600.00 per month and the Court finds that Petitioner would need \$700.00 to \$710.00 per month for a mortgage payment. The Court finds that Petitioner has a need of \$400.00 for food and this is reasonable because it is the same amount the Respondent states he needs for himself and she will be feeding the minor child and herself. Clothing of \$200.00 a month is reasonable. The Court finds that \$763.00 for transportation is too high and finds that \$550.00 is a reasonable amount to account for maintenance, insurance and fuel. \$250.00 for utilities, \$45.00 for education, \$275.00 for health care, \$20.00 for health care expenses, \$65.00 for cancer insurance, \$50.00 for entertainment,

\$20.00 for donations, \$20.00 for gifts, are reasonable expenses. The real property taxes of \$140.00, real property insurance of \$36.41 and \$50.00 real property maintenance are reasonable expenses and the difference between what it may be when Petitioner purchases a home is negligible. The phone bill of \$250.00 is excessive and the court finds that \$125.00 is more in line with having a cell phone and a land phone. The Court will not give credit for the credit card expense of \$350.00 a month as it was incurred after the parties' separation and has increased since the temporary order. The Court will allow \$200.00 a month for the horses and animal feed. This accounts for the minor child's two horses and stock feed. The adult child will need to be responsible to pay for her two horses. This leaves the Petitioner with a need of \$3,130.00 to \$3,140.00 with a short fall of \$1,300.00 a month.

13. When the Court reviews the Respondent's financial declaration and what he needs, Respondent hasn't contested that he doesn't have the ability to pay. Respondent has a net income of \$5,396.36 and after he has paid his monthly expenses, he has a balance of \$2,070.00 per month. The Court recognizes that Respondent will need to invest money into the home and pay Petitioner her equity of \$34,000.00 and take out a loan to pay Petitioner her equity in the property. The court finds that Respondent will need to make repairs to the marital residence that will be awarded to him. The court finds that those repairs will cost about \$70,000. Respondent will likely need to borrow money to make the repairs and that his monthly loan payment for those repairs and the equity payment will be approximately, \$560.00 per month. Once Respondent makes the repairs, his residence will then be valued at approximately \$140,000. Respondent and Petitioner will then have equal housing arrangements. The Court finds that Respondent has the ability to pay \$1,300.00 in alimony to Petitioner. The minor child deserves to have an appropriate place to live and stay when she is with each parent.

REAL PROPERTY

14. The parties do own a home and real property, which was acquired during the marriage, located at 385 N. 400 W. Orangeville, Utah, 84537. The homes should be awarded to Respondent. The home was appraised at \$68,000.00 which was evidenced by the appraisal and entered as an exhibit. Respondent should pay Petitioner \$34,000.00 as her equity in the marital home. Petitioner should vacate the home by April 1, 2011. Respondent should pay Petitioner her equity in the home within 30 days from the Decree so that she can have the money for a down payment on another home and can be out by April 1, 2011.

LIFE INSURANCE

15. Petitioner is not awarded to listed as the beneficiary of Respondent's life insurance for the purpose of assuring alimony. The law is that alimony terminates upon the death of the party. Respondent should maintain a life insurance policy and name the child as the beneficiary to secure the child support payment for the minor child.

SAVINGS ACCOUNTS

16. The Petitioner testified that the parties had a joint saving's account with a sum of \$13,000.00. Respondent denied having the account. If there is future evidence of Respondent secreting money, it can be brought back before the Court.

DEBTS

17. Each party should be ordered to pay and assume their own debts incurred after the parties' separation of April 2010, to the present. Each party should hold the other party harmless from any liability on these debts. Any unknown debts should be the responsibility of the party who incurred the debt or benefitted from the debt.

18. The parties have marital debts. Each party shall notify the creditor to whom the

parties are responsible to pay of their responsibility to pay the debt. The parties shall mail to their creditor(s), via certified mail, a certified copy of the Decree of Divorce, along with their current mailing address and a letter explaining the Court=s division of debt. The parties shall be ordered to keep creditors advised of his/her current mailing address. Each party should hold the other party harmless from any liability on these debts. Any unknown debts should be the responsibility of the party who incurred the debt or benefitted from the debt. The parties should be responsible to pay the following debts:

Petitioner:

A, U.S. Bank Credit Card

PERSONAL PROPERTY

19. During the course of this marriage the parties have acquired personal property but the parties have been unable to agree on the value or method of valuing the personal property. The Court has invited the parties to try and resolve the issue of personal property but to no avail. Each party has provided documents. Petitioner has presented a list of personal property to be awarded to Petitioner and a list to be awarded to Respondent with values listed by each item and a total at the bottom of the list. The lists indicate Respondent's personal property being of more value than the Petitioners. The Petitioner offers to stipulate that although she finds Respondent's property to be of more value, she is willing to offer that both parties be awarded the personal property as her lists indicate and that neither party pay the other party the difference in value.

20. Respondent submitted values, his list was not as detailed as Petitioners, but Petitioner does not agree to his values. The Court has not received any expert testimony, no appraisals of the personal property, no Kelly Blue Book Values for the vehicles. The Court does not see that a complete list has been presented to the Court such as tools, household

furnishings. The Court finds that it has not received evidence to resolve the personal property issue. The parties have presenting evidence to the values of the property but the values differ. The Court finds that neither list is credible. The Court has tried to give the parties an opportunity to resolve the issue so it doesn't have to order the personal property sold.

21. The Court orders that the personal property be sold, which includes every gun, fishing pole, mounts, couch, lamp, tools, all of the vehicles, and four wheelers to establish value. The only personal property not to be sold are the horses owned by the parties' children, the furniture used by the child, saddles and tack associated with children's horses. The proceeds from the sale of the personal property should go to pay off the debt on the horse trailer and then divided equally between the parties.

ATTORNEY'S FEES

22. Both parties have stipulated to pay their own attorney fees in this matter.

DOCUMENTS

23. Each party should be ordered to execute and deliver to the other party any documents necessary to implement the provisions of the Decree of Divorce entered by the court. Should a party fail to execute a document within 60 days of the entry of this Divorce Decree, the other party may bring an Order to Show Cause at the expense of the disobedient party, including attorney fees, and seek that the Court appoint some other person to execute the document pursuant to Rule 70 of the Utah Rules of Civil Procedure. Any document executed pursuant to Rule 70 has the same effect as if executed by the disobedient party. If a party fails to comply with any provision of the Decree of Divorce, and the other party is required to file an order to show cause to have the other party comply, the prevailing party should be awarded his/her court costs and attorney fees.

RESTRAINING ORDERS

24. Both parties should be restrained and enjoined from making disparaging remarks about the other in front of the child and should not allow other family members or others to make disparaging remarks about the other in the presence of the minor child. The parties should further be restrained from intimidating or harassing the other party or the child.

FORMER NAME

25. Respondent should have her former name of Barnes restored to her if she so chooses.

RETIREMENT

26. Petitioner should be awarded one-half of Respondent's pension plans through UP&L and IBEW and any other sources using the Woodward formula. The parties should divide the costs equally for the costs associated with the preparation of the QDRO's.

27. The parties have 401k plans. Petitioner has a 401k of \$565.33 and Respondent has a 401k plan of approximately \$1,700.00. The parties should offset Petitioner's from Respondent's amount and divide the remaining balance or equalize through the division and sell of the personal property.

TAX EXEMPTIONS

28. Petitioner is awarded the right to claim the minor child commencing in 2011 and Respondent is awarded the right to claim the child commencing in 2012 and the parties should alternate claiming the child every other year, thereafter.

CONCLUSIONS OF LAW

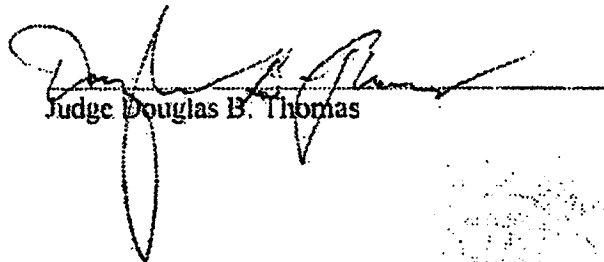
1. This Court has jurisdiction over the subject matter of this action, and personal jurisdiction over the parties herein.

2. The Petitioner should be granted a Decree of Divorce from the Respondent said

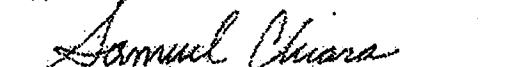
Decree of Divorce to become final automatically upon the date of signing and entry by the Court pursuant to the provisions of Utah code Annotated Section 30-3-7(1953 as amended).

3. The Decree of Divorce should be entered in conformance with the foregoing Findings of Fact.

DATED this 15th day of March, 2011.


Judge Douglas B. Thomas

Approved as to form and content:


Samuel P. Chiara, Attorney for Respondent
Chiara & Torgerson, PLLC

Farnsworth
FOF



West's Utah Code Annotated Currentness

Title 30. Husband and Wife

Chapter 3. Divorce (Refs & Annos)

→ § 30-3-5. Disposition of property--Maintenance and health care of parties and children--Division of debts--Court to have continuing jurisdiction--Custody and parent-time--Determination of alimony--Nonmeritorious petition for modification

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

(b)(i) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employ-

ment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5)(a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8)(a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g)(i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

CREDIT(S)

Codifications R.S. 1898, § 1212; C.L. 1907, § 1212; C.L. 1917, § 3000; R.S. 1933, § 40-3-5; C. 1943, § 40-3-5.

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